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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of FENGYU LU and AIQIONG SU.	
FENGYU LU, Respondent, v. AIQIONG SU, Appellant.	A154560 (Mendocino County Super. Ct. No. SCUK CVFL 15-66788)

Appellant Aiqiong Su appeals a judgment of dissolution of her marriage to respondent Fengyu Lu. She contends the trial court's finding that the parties had previously divided their property to their "mutual satisfaction" is without evidentiary support and that she in fact deserved compensation for the time she spent working at Lu's restaurant during the marriage. For the reasons detailed below, Su has not satisfied her burden of demonstrating error. We thus affirm.

BACKGROUND

Appellant Aiqiong Su and respondent Fengyu Lu married on April 13, 2013. On December 22, 2015, Lu, appearing in propria persona, filed a petition for dissolution, seeking a divorce due to irreconcilable differences. In the petition, he represented that there were neither separate assets to be confirmed nor community assets to be divided by the court.

On February 9, 2016, Su, also appearing in propria persona, filed a response to Lu's petition, likewise requesting a divorce due to irreconcilable differences. In contrast to Lu's representation, however, Su asked the court to confirm yet "to be determined" separate property and divide yet "to be determined" community property. She also requested attorney fees.[1]

The following day, Su filed an income and expense declaration (IED). In it, she represented that she had a junior high school education, was unemployed, and had estimated monthly expenses of $2,250. She estimated Lu's income to be "20,000 gross per month just from the restaurant" ("the restaurant" being the Lotus restaurant in Ukiah, which Lu had owned since before the marriage) and represented that he also received income from three rental properties. The value of their assets were "unknown" to Su.

Concurrent with the IED, Su filed a request for attorney fees and spousal support, set for hearing on March 23. In support, she declared the following:

"I am from China and came here to marry Petitioner. I started to work at his restaurant but became ill with a cold in April 2015 then it developed into pneumonia & bronchitis & other virus (maybe mycoplasma). I am covered by insurance but went to China in August 2015 for health assistance because no one in the local hospital speaks my language and could not understand me. When I went to China, Mr. Lu forced me to sign some type of marital agreement. I was not represented by an attorney and did and do not know the California family laws.

"Now that Mr. Lu wants a divorce, I need financial help to move to San Francisco where I will have support and people I know. Because of my always needing an interpreter for this divorce and legal advise [*sic*] to uphold my rights, I need to hire an attorney who knows my language.

[1] Su also filed a request for an interpreter, as she speaks only Mandarin and Cantonese.

"Petitioner owns the Lotus Restaurant and 4 residences. He controls everything financially so I can't even guess how much he has in any bank accounts. He is in full control and never let me know about anything, only controlling me.

"I need assistance until I fully recover from my condition, am able to move to San Francisco and get a job to support myself."

On March 23, Su's request for spousal support and attorney fees came on for hearing. Because she failed to file proof of service of the papers on Lu, however, the matter was continued to April 21. Given the continuance, Su requested, and received, $1,500 in emergency temporary support.

On April 14, Lu filed an IED. He reported a monthly income of $2,738.16 from Lotus and monthly expenses of $2,772.61. As to assets, he reported $350,000 of equity in real property.

Appended to Lu's IED was a three-and-one-half page handwritten statement, in which he described the history of his and Su's relationship, claimed she only married him in order to obtain a green card, and requested that the court not award her spousal support for seven reasons, one of which was that they had signed two "marital agreement[s]." Lu also represented that he owned all of his property prior to the marriage.

Among other documents appended to the IED were the two aforementioned "marital agreements."[2] In the first, signed by Lu and Su on January 10, 2014, the spouses agreed that "[n]o matter what situation, what reason," neither spouse could accept spousal support or "get any property" from the other, nor could the court order one spouse to pay support to the other. In the second, signed by both spouses on July 21, 2015, they agreed that for three years following the date of the agreement, if one of them requested a divorce, "this party is not responsible for any economy, emotion and living to the other party, no need to pay any spouse support to the other party, won't split up the property (including real property and personal property) from the other party."

[2] Both documents were translated from Chinese to English and notarized.

On April 21, 2016, Su's request for spousal support and attorney fees came on for hearing. Both parties appeared and testified.[3] At the conclusion of the hearing, the court found that Su signed the agreements (which Lu had prepared) under duress and declined to enforce them. Instead, it ordered Lu to pay Su $800 per month in temporary spousal support and $5,000 in attorney fees.

On May 27, the matter came on for a case management conference. Neither party appeared, and the matter was continued to November 18. On October 11, however, Su filed a status report, requesting another continuance because the couple was attempting to reconcile, and the matter was continued to May 19, 2017.

On May 19, 2017, the matter again came on for case management. This time, Lu appeared, but Su did not. At that hearing, the court set an August 30 trial date. On June 7, the court served on the parties at their addresses of record the minute order reflecting the trial date, and two days later it served on both parties a notice of the trial date.

On August 24, Lu filed an IED in which he reported a monthly income of $3,901.25 from Lotus, plus $600 per month in investment income. As to assets, he reported cash and other deposit accounts valued at $2,155.83 and $250,000 of equity in real property. His total monthly expenses were $3,685.12, plus the $800 he paid Su each month. According to Lu, since March 25, 2016, he had paid Su $19,400 and did "not have money to pay her."

The matter came on for trial on August 30, 2017. Again, Lu appeared, but Su did not. The court found she was provided notice at her address of record and had not filed a change of address, so the trial went forward in her absence. At the conclusion of the trial, the court granted dissolution of the marriage effective that day, terminated jurisdiction as to spousal support, and found "property ha[d] been previously distributed to the parties[']

[3] The record does not contain a transcript of the hearing, or of any hearing in the proceeding, as Su designated only a clerk's transcript.

mutual satisfaction." That same day, the court entered judgment to that effect and served notice of entry of judgment.

On September 13, Su filed a request to set aside the judgment on the ground that she had not received notice of the trial because it was sent to her old address and she did not receive it from her former landlord until after the trial.[4] Su claimed that in the months prior to the trial, she had repeatedly asked Lu about the status of their divorce, and he told her it was on hold and there was nothing she needed to do, which was a lie since he was moving forward with the divorce without her knowledge. In September, she asked him if he wanted to fly to China with her, and he told her he did not want to have anything to do with her because they were divorced. She went to the courthouse and learned a judgment of dissolution had been entered. Su objected that the judgment was "very unfair" because she had worked at Lu's restaurant during their marriage and never received payment for her work. Further, she claimed he had not paid her spousal support for "most of the summer" because he said they had reunited.

On October 17, Su's request to set aside the judgment came on for hearing. Both parties testified, after which the court granted the request. Specifically, the court found that Su's failure to attend the dissolution trial "was a result of fraud (Petitioner Fengyu Lu telling [Su] that it was unnecessary to attend court because they may reconcile) and/or mistake or excusable neglect . . . ." Accordingly, the court set aside the judgment, reinstated the temporary spousal support order, directed the parties to exchange IEDs, and set the matter for trial on February 15, 2018, a date later continued to May 16, 2018 by stipulation of the parties.[5]

On May 14, 2018, Lu filed two documents. The first was a separate property declaration identifying property on Fairway Avenue in Ukiah as his separate property and

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[4] Concurrent with the request, Su filed a notice of change of address.

[5] On February 2, 2018, Su, who was self-represented until that point, filed a substitution of attorney, substituting in Catherine Y. Wong as her counsel. On April 2, Su filed another substitution of attorney, this time substituting Wong out as her counsel and returning to self-represented status.

representing that he purchased it in 2004 and it had $275,728.62 in equity, of which $4,814.15 should be allocated to Su with the remainder to him.[6] The second was an IED in which he identified monthly income of $4,934.50; monthly expenses of $3,969.24; cash, savings, and other deposit accounts of $5,547.39; and real property worth $275,728 in equity. He also represented that since March 25, 2016, he had paid Su $23,400, and he did not believe he should have to pay her "anything."

On May 16, the request for dissolution of marriage came on for trial. The court noted that it had received and reviewed Lu's IED and separate property declaration, but it had received no declarations from Su. While the court was willing to continue the matter so Su could file an IED, the parties stipulated to proceeding based on testimony by Su regarding her income and expenses. Again, because Su did not designate a reporter's transcript, the record does not contain a transcript of the trial. Thus, we must glean what transpired at the trial from the court minutes, which indicate as follows:

Trial began with opening statements, with Lu requesting that the court deny Su's request for spousal support and Su requesting that the court award her support. The court examined both parties regarding their marital standard of living and then examined Su on her efforts to become self-supporting. Su advised the court that she was not requesting that it continue the $800 per month spousal support award, but instead that it order Lu to pay her a share of Lotus's proceeds during the marriage. After examining Lu regarding payments made to Su and after hearing Su's closing argument, the court made the following findings regarding the Family Code section 4320 factors governing awards of spousal support: the couple enjoyed a middle class standard of living; Su has marketable skills and is able to find employment; her ability to find employment was not negatively impacted by the marriage; Su did support Lu's restaurant by contributing her labor without pay, as did Lu, and they both benefitted from the community labor, which contributed to the marital standard of living; Lu was able to pay spousal support; Su was

[6] He explained that for five months in 2013, he and Su had paid the mortgage out of community funds, half of which should be reimbursed to Su. After that, he paid the mortgage from equity he had withdrawn from the house through a refinance.

living below the marital standard of living; the community did not have significant assets or obligations to divide; the marriage was of short duration; and neither party indicated he or she was unable to work.

Additionally, the court found that Su had received support for a period nearly equal to the length of the marriage ($23,000 in total) and had had a reasonable amount of time to become self-supporting; Lu had paid Su $4,814.15 from his separate property to reimburse her for community funds that were used to pay the mortgage on the marital residence in 2013; and "that there are no outstanding proceeds from Ms. Su's work at the restaurant and the community benefited from her labor at the time the work was done."

Based on the foregoing, the court denied Su's request for spousal support and for reimbursement of wages for work she performed at Lotus during the marriage. It granted a dissolution of marriage effective that day.

Judgment of dissolution was entered May 29. The terms of the judgment were consistent with the court's order following the May 16 trial, although as to property division, the judgment stated, "Previously divided to the parties['] mutual satisfaction."

Notice of entry of judgment was served on May 29, and Su timely appealed.

DISCUSSION

Su's appeal challenges only one aspect of the judgment of dissolution: the court's finding that the parties' property was "previously divided to the parties['] mutual satisfaction." She claims the finding is unsupported by the evidence, reasoning as follows: During the marriage, she worked at Lotus, the restaurant Lu owned from before their marriage, but she was never paid for her labor, nor were the restaurant's proceeds during the marriage divided as community property. Instead, the proceeds were used for Lu's exclusive benefit, on expenses such as: the mortgage and other expenses associated with the commercial building in which Lotus is located and four other properties, all of which Lu owned; the mortgage and other expenses for Lu's second wife's house; a vehicle purchased in 2014; home and restaurant furniture, building materials, and decorations; electronics; appliances; and a piano. According to Su, she was not awarded

any of these purchases in their property settlement. We are compelled to reject Su's argument, for multiple reasons.

First, it is a fundamental requirement on appeal that an appellant challenging the sufficiency of the evidence to support a judgment state in the opening brief all evidence pertinent to that point. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 530; *Estate of Hilton* (1996) 44 Cal.App.4th 890, 922.) Similarly, an appellant must file an opening brief that, among other things, "[p]rovide[s] a summary of the significant facts limited to matters in the record," and a party must provide a citation to evidence in the record supporting any matter asserted in a brief. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) Su's briefs fail to comply with these mandatory rules.

Despite that Su challenges the division of what she claims was community property, the statement of facts in her opening brief is, in its entirety, one page long. It is essentially a short synopsis of certain aspects of the proceeding's procedural history. Other than a reference to Lu's May 14, 2018 separate property declaration in which he listed one real property and indicated he could not recall the date he acquired a Wells Fargo checking account, it contains no mention of the parties' income or property. It contains no facts, let alone "significant facts," that would allow us to evaluate her claim that she was entitled to a portion of the proceeds of the Lotus restaurant.

Su's argument section contains additional information, but this, too, is defective. While some of the facts are supported by a citation to Su's February 10, 2016 request for spousal support, the vast majority—and, in particular, those relevant to her community property claim—are unsupported by any citation to the record. For example, Su asserts without any record citation that Lu spent the community income from the Lotus on the following items, none of which was allocated to her upon dissolution: "1) paying the mortgages, property taxes, maintenance costs for four houses and the commercial building of the Lotus Restaurant including one house Ms. Su and Mr. Lu resided in; [¶] 2) paying the mortgages, property taxes, maintenance costs for one house of the

second ex wife of Mr. Fengyu Lu; [¶] 3) purchasing a brand new car Toyota Highlander in 2014; [¶] 4) purchasing home furniture, restaurant furniture, electronics, refrigerators, one used grand piano, building materials for all houses and restaurant interior and exterior decorations and renovations." Another example is Su's statement that "The income from the restaurant is more than what Mr. Fengyu Lu stated. The restaurant has cash incomes, Mr. Fengyu Lu has underreported [*sic*] the income of the restaurant." Not only do these and other "facts" lack citation to the record, they simply do not appear in the record.

Su's reply brief is rife with the same defects. It contains more than six pages of argument, most of which attempts to refute Lu's assertions in his respondent's brief. However, the "facts" supporting her refutations either cite to her opening brief as support, or fail to include a supporting citation at all. And, again, the vast majority of her claims find no support in the record. Merely by way of example:

— Su claims Lu "used the income from the Lotus Restaurant (the community property) to refinance three rental houses and one residence house and take out money from the residence house's refinance process to buy out the commercial real estate of the Lotus Restaurant." There is no evidence of this in the record.

— Responding to Lu's representations in his respondent's brief regarding the couples' monthly average net income for the years 2013, 2014, and 2015, Su states, "The average income that Mr. Lu presented here does not reflect his living standard during that time[.] Mr. Lu can still afford a nice residence house, three rental properties, one Restaurant, one Restaurant commercial real estate, make payment to his second ex wife's property's property tax, maintenance, and repair cost. Mr. Lu has underreported the restaurant's cash income. Ms. Aiqiong Su estimates that the Lotus Restaurant monthly net income should be around $6,000 to $8,000. Mr. Lu's second ex wife's property's rental income is about $1,500 for unit 1 per month, $1,100 for unit 2 per month, and the monthly payment that Mr. Lu paid to his second ex wife's house is about $3,900, plus the property tax around $5,000 yearly. This is from the Lotus Restaurant income." There is no evidence of this in the record.

— Su estimates "that Mr. Fengyu Lu may have underreported 50% of the total cash income from the Lotus Restaurant. Ms. Su was a waitress and cashier at the Lotus Restaurant during her marriage with Mr. Lu. At the end of the day, Mr. Fengyu Lu collected all the cash including all the tips Ms. Su received. Ms. Su estimated the tips received from the customers is averaged around $50 per day, or $1500 per month." There is no evidence of this in the record.

— Su claims the court was incorrect in finding Lu paid Su $4,814.15 " 'as reimbursement for community funds that were used to pay mortgage on the marital residence in 2013' " because she never in fact agreed to such a transaction. There is no evidence of this in the record.

These are but a few of the myriad factual assertions Su makes in her opening and reply briefs that lack citation to the record, and in fact do not exist in the record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) And where facts are unsupported by citation to the record, we are at liberty to disregard them. (*Baron v. Fire Ins. Exchange* (2007) 154 Cal.App.4th 1184, 1186, fn. 1.)

Su's briefs also fail to comply with California Rules of Court, rule 8.204(a)(1)(B), which requires that each brief "state each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority . . . ." Her briefs do not contain headings "summarizing the point[s]" she seeks to assert, and while this is a defect we could likely overlook, the briefs cite only one legal authority—Code of Civil Procedure section 904.1, subdivision (a)(1), which authorizes an appeal from a final judgment. In the absence of legal authority supporting her claim that the trial court erred, we cannot evaluate her contention.

Beyond these insurmountable briefing issues, Su's appeal is defeated by other defects. She claims that at the May 16, 2018 trial, she was not given an opportunity "to express her statement about community properties during [the] marriage." However, because Su did not designate the May 16 trial transcript as part of the record, there is no transcript of what evidence the trial court heard at the trial. The form notice designating record on appeal Su completed specifically advises, "I understand that without a record of

the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings." We are thus left with no choice but to disregard her repeated assertion that the court did not hear her community property evidence.

Finally, and perhaps most significantly, it is a fundamental principle of appellate review that "[a] judgment or order of a lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; accord, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.) In light of the above-noted deficiencies, Su has not carried her burden of affirmatively showing error.

In closing, we note that Su appears before us in propria persona, as she did for most of the proceeding below. Self-represented litigants, however, are held to the same standards as attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation"]; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; *Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [in propria persona litigant is held to same restrictive rules of procedure as an attorney].) We are thus without power to ignore her failings.

DISPOSITION

The judgment is affirmed.

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Richman, J.

We concur:

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Kline, P. J.

_____
Miller, J.

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